

Disclosure Analysis Guidelines

Resource Guide

Almost all Child Welfare documents contain confidential information that may need to be redacted prior to disclosure. Analyzing what information DHS may disclose requires critical thinking skills. This resource guide, the summary diagram and appendices are meant to provide information necessary to guide critical thinking for the majority of questions related to disclosure and confidentiality. Further requests for assistance in analyzing disclosure issues should be made to a DHS paralegal or the Department of Justice.

Definitions

Child Welfare Record	Everything related to the child and family in the possession of the Department of Human Services, Child Welfare, which includes but is not limited to: photos, emails, service provider documents, case notes, electronic documents and case history.
Client	A person to whom the Department provides services and includes children, parents, legal guardians, and legal custodians of unemancipated minor children who receive services. Individuals who apply for and individuals who are granted certifications to operate foster homes are not clients. Adoptive parents are clients when: (a) The Department has placed a child with them on a designated adoption basis; or (b) They have signed a legal risk adoption agreement.
Court Order	Court orders from within Oregon's judicial system. Court orders originating from other states may need additional consultation with a paralegal or Department of Justice.
Disclosure	Information or documents provided to other persons: if required or permitted by state law, federal law, federal regulations or state administrative rule; pursuant to a court order; as required by a Subpoena Duces Tecum; in response to a public records request; as part of discovery; in order to facilitate the provision of services to children, parents or families; and in other circumstances where DHS is required or authorized to release information or documents.
Discovery	Ongoing statutory obligation to disclose specific types of information and documents to all parties in a juvenile court proceeding within mandated time lines.
Expunged Record	Information removed from the CW record as required by court order regarding a specific person.
Redaction	To obscure or remove text from a document prior to release.
Subpoena	A command for appearance in court or at a deposition with penalty for failure to appear. (A person can be served with a subpoena to appear at a deposition at an attorney's office or some other location besides court.)
Subpoena Duces Tecum	A subpoena that requires: a) appearance in court or for a deposition and directs the subpoenaed person to bring specific records; or b) that specific records be delivered to a particular location, i.e., court, an attorney's office, etc.

Disclosure Overview and Examples

There are seven ways disclosure occurs. They are listed below with some examples of individuals we might be disclosing information to.

If required or permitted by state law, federal law, federal regulations or state administrative rule – Citizen Review Board, Court Appointed Special Advocate, Law Enforcement Agency, Hospitals, Doctors and other Child Welfare agencies. Appendices 2.b, 2.j, 2.l, 2.m, 8.a and 8.b

Pursuant to a court order

As required by a Subpoena Duces Tecum

In response to a public records request – This includes clients requesting copies of their own records. It may also include requests from media and opposing council in tort cases. Appendices 7.a, 7.b, 7.c

As part of discovery – Legal parties include: the child or ward (in the jurisdiction of the court); the parents or guardian of the child or ward; a putative father of the child or ward who has demonstrated a direct and significant commitment to the child or ward by assuming, or attempting to assume, responsibilities normally associated with parenthood, including but not limited to: residing with the child or ward, contributing to the financial support of the child or ward or establishing psychological ties with the child or ward; the state; the juvenile department; a court appointed special advocate, if appointed; the Department of Human Services or other child-caring agency if the agency has temporary custody of the child or ward and; the tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pursuant to the Indian Child Welfare Act. An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS 419B.500. Appendices 2.e and 2.n

In order to facilitate the provision of services to children, parents or families – Psychologists, Psychiatrists, Alcohol and Drug Treatment Providers and Mental Health Treatment Providers

In other circumstances where DHS is required or authorized to release information or documents

**Information below this point is numbered to
correspond to the Summary Diagram**

1. What type of disclosure is being requested? (Appendix 6)

Disclosure: All information released or distributed is disclosed information (see definitions above). We follow different rules when providing discovery, but it is also a form of disclosure. Appendix 1

Discovery describes the types of information that must be provided to all legal parties as part of discovery. Appendices 2.e and 2.n

Records requests made by individuals who want a copy of their own records are handled within the local branches. The local branch should track basic information from these types of records request:

- Branch name or number
- Name of the requester
- Date request received and completed
- Amount charged if any

Local branch tracking of requests should be periodically sent to Keely West - klwest@dhs.state.or.us or PublicRecords, DHS - DHSPBRC@dhs.state.or.us

Except for client requests for their own records, all Public Records Requests (including media), which may be received on a form 5107, are handled by the Director's Office, Office of Communications. Scan the request and email it to Keely West - klwest@dhs.state.or.us or PublicRecords, DHS - DHSPBRC@dhs.state.or.us. If you have any questions or need any assistance, contact Keely West via email or call Keely at 503-945-6292.

Public Records Requests and subpoenas related to tort cases are handled by the CAF Risk Management Tort Liability coordinator in CAF Administration, Caroline Burnell. Scan the subpoena and e-mail it to Caroline at cburnell@dhs.state.or.us or fax it to Caroline at (503) 581-6198. Copy the email to Pamela J. Pearson ppearson@dhs.state.or.us. With a subpoena, provide this information:

- (1) When they received it (i.e. date/time)
- (2) How they received it (i.e. in person/by mail)

If you have any questions or need any assistance, contact Caroline Burnell via email or call Caroline at 503-945-6640.

2. Additional important considerations to complete 2099 (Authorization)

Obtaining a signed Authorization for Use & Disclosure of Information (form DHS 2099) allowing mutual exchange of information is the simplest way for staff to receive and disclose information. Detailed instructions on completing the 2099 are provided on the 2099i. Appendices 5.a and 5b

In order to Facilitate the Provision of Services - Authorization from client must be specific to each individual provider identifying specific information to be disclosed. If the records being released contain HIV/AIDS, mental health, alcohol & drug and/or genetic testing information, the client must initial in section A of Authorization (2099). Appendices 5.a, 5.b, 7.c and 9

As Part of Discovery - Authorization needed from client to disclose HIV/AIDS, alcohol & drug and/or genetic testing information to juvenile court and all legal parties. The client must initial in section A of Authorization (2099). Appendices 2.e, 5.a, 5.b, 7.c and 9

In Response to Client/Public Records Requests - Client requests for their own information do not require an authorization (2099) and are handled locally. Records requests made by media are handled by the Directors Office, Office of Communications. Records requests and subpoenas related to tort cases are handled by the CAF Risk Management Tort Liability Coordinator in CAF Administration.

If Required by Law - Authorization (2099) is needed from the client to disclose HIV/AIDS, alcohol & drug and/or genetic testing information (client must initial in section A of authorization form). For all other information, the 2099 is not required. Appendices 5.a, 5.b and 9

As Required by a Subpoena Duces Tecum - Not always required but authorization may permit release of information that is subject to the subpoena.

Other Circumstance where DHS is Authorized - Consult with DHS paralegal and/or DOJ.

Noteworthy instructions on page 2 of the 2099:

Cancel: If you later want to cancel this authorization, contact your DHS staff person. You can remove a team member from the form. You will be asked to put the cancellation request in writing. Exception: Federal regulations do not require that the cancellation be in writing for the Drug and Alcohol Programs. No more information can be disclosed or requested after authorization is cancelled. DHS can continue to use information obtained prior to cancellation. **Staff: When a client cancels an authorization, clearly note the date and write “Void” across the 2099.**

Minors: If you are a minor, you may authorize the disclosure of mental health or substance abuse information if you are age 14 or older; for the disclosure of any information about sexually transmitted diseases or birth control regardless of your age; for the disclosure of general medical information if you are age 15 or older.

Special Attention: For information about **HIV/AIDS, mental health, genetic testing or alcohol/drug abuse treatment**, the authorization must clearly identify the specific information that may be disclosed and the purpose.

Re-disclosure: Federal regulations (42 CFR Part 2) prohibit making any further disclosure of Alcohol and Drug information; state law prohibits further disclosure of HIV/AIDS information (ORS 433.045, OAR 333-12-0270); and state law prohibits further disclosure of mental health, substance abuse treatment, vocational rehabilitation and developmental disability treatment information from publicly funded programs (ORS 179.505, ORS 344.600) without specific written authorization. Appendices 3 and 9

3. Under what authority/circumstances can a document or information be released?

- HIPAA protected health information may be released with a (1) court order, (2) pursuant to a special type of properly executed subpoena, (3) as permitted by an Authorization (2099) or (4) as required by law, for example 419B.881 and 409.225. Appendices 2.d, 2.e, 3, and 7.c
- Federally protected alcohol and drug information may be released with (1) a court order or (2) pursuant to an authorization (2099). Appendices 2.c , 3, and 9
- Domestic Violence victim contact and/or identifying information may be released with a court order or an Authorization (2099). Information provided to the court can be viewed by the other party in a case, including the batterer. Service and safety plans can be described in general terms so as to not disclose specific information to the batterer. If the situation requires sharing sensitive information which may affect safety, consult with a Deputy District Attorney or AAG and seek their assistance to request an in chambers meeting with the juvenile court judge to discuss that information. Appendices 2.o, 2.p and 2.q
- Information gathered during a child protective service (CPS) assessment may be released with (1) a court order, (2) according to 419B.035(1)&(3) or (3) in accordance with the Information Memorandum dated August 17, 2009. Appendices 2.b, 3 and 7.d
- Information about people who report child abuse may be released as (1) part of a cross report to law enforcement or (2) by a Court Order. If disclosure of reporting party information is necessary in order to call a witness in a juvenile court case, the AAG or DDA must make the decision whether or not to release the information. Appendices 3 and 7.e
- Foster certification records may be released if (1) court ordered, (2) with an Authorization (2099) or (3) as part of a public records request. The Department of Justice periodically provides advice to the CAF Foster Care unit in Central Office, so questions should be directed to that unit. Appendix 7.a

- Foster parent name, address and other identifying information are confidential and are not available for public inspection. This information may be released if court ordered or according to 418.642. Appendix 2.f
- Adoption records may be released when court ordered. Appendices 3 and 7.e
- Attorney/client privileged information between DHS and Department of Justice (DOJ) is confidential and may never be released to anyone other than the DOJ. There are many cooperative relationships with local District Attorneys and other attorneys but they are not representing DHS, therefore DHS does not have an attorney/client relationship with them where information is privileged.
- Pleadings, affidavits, motions, orders, petitions and judgments may be released only as provided in 419A.255 and 419A.257 or through a court order. Appendices 2.g and 2.k

4. What information MUST be redacted no matter where it is located in any document?

As part of Discovery

- Remove confidential/protected information regarding anyone other than the client unless required by 419B.881 Appendices 2.e and 9
- Remove foster parent contact information
- Domestic violence case: remove victim contact information and/or identifying information
- DHS can seek guidance from the court regarding what must be produced as discovery including an order that denies, restricts or defers discovery. Consult with a Deputy District Attorney or AAG if court order is needed.

Public Records Requests made by a Client (Appendix 3)

Public Records Requests made by the media or as part of a tort claim are not handled locally. See section one of this guide for instructions.

- Review 2093 (Request for Access to Records) to identify the client/parent making the request and identify their legal children. The requestor has a right to receive information about them and their legal children (unless DHS determines that such disclosure could cause harm to the client or to another person). The 2093 is the request to review records, it does not provide any type of authorization to view records. An analysis of what may be released is still necessary. Appendices 1 and 4
- Redact confidential/protected information regarding 3rd parties (including other clients, spouses, ex-spouses, significant others, partners, battering partners, housemates, half-siblings, non-legal/step-children) which may include:
 - Names
 - Date of birth
 - Social Security Number
 - Address
 - Phone number
 - Medical
 - Mental health
 - Substance abuse (alcohol and drug)
 - Criminal history
 - HIV/AIDS
 - Genetic Testing
 - Vocational Rehabilitation

- Redact reporting party name/address/phone and identifying information
- Redact Domestic Violence victim information (ie: victim's location, phone number, etc.).
- Redact Foster Parent name, address, phone and identifying information.
- Per the 8/17/09 Information Memorandum Transmittal, if the 307 contains information such as protected medical information, A&D treatment or criminal history regarding an individual other than the requestor, this information must be redacted. Appendix 7.d
- Per the 8/17/09 Information Memorandum Transmittal, if the 307 contains information about one parent or another individual which is not directly related to assessment of abuse, this information is normally redacted. DHS has discretion to release "spousal information" for custody disputes. See ORS 419B.035(3), which says that DHS may release information from a 307 if: 1) necessary to administer its child welfare services and is in the affected child's best interests; or 2) necessary to investigate, prevent or treat child abuse and neglect or to protect children from abuse or neglect.
- Never disclose attorney/client privileged information (communication between AAG and DHS).
- If mailing the client their requested records, it should be mailed to the address provided by the client when they make the request instead of relying on the computer system to provide a current and accurate address.

Court Order

- Redact reporting party name, address, phone number and identifying information
- If the Court Order is for "*In-Camera Review*", no redaction is necessary because the file is provided to the Judge for their eyes only and DHS submits the request for a Protective Order to restrict use of the information for the purpose for which the file was subpoenaed and to ensure that confidentiality will be preserved by prohibiting re-disclosure. Seek assistance from a Deputy District Attorney or AAG for a protective order.
- Remove all attorney/client privileged information (communication between AAG and DHS) from the file
- Release only information that the court order says must be released.

As required by a *Subpoena Duces Tecum*

- A subpoena which requests items be brought with the person is called a "subpoena duces tecum". A subpoena duces tecum requires: a) appearance in court or for a deposition and directs the subpoenaed person to bring

specific records; or b) that specific records be delivered to a particular location, i.e., court, an attorney's office, etc.

- If DHS removes information from a record before providing it to the court pursuant to a court order, DHS should inform the court that some categories of information were removed, i.e., attorney/client privileged information.
- Per the Child Welfare Procedure Manual, Chapter 1, Section 4, pages 15 & 16: When required to testify or present records, which are confidential or exempt from disclosure, the CW worker reads the following statement to the court prior to testimony.

“Your honor, I have been advised by legal counsel to inform this court that state law prohibits the disclosure of information contained in DHS child welfare files, either through release of records or testimony unless such disclosure is directly connected to the administration of the child welfare laws. Violations of disclosure could subject the agency to criminal penalties. The following is a copy of some of the statutes making the information confidential and privileged from disclosure. Information from the files could be subject to further state and federal restrictions on disclosure depending on the contents of the child welfare file. Because of these restrictions on disclosure, it is my understanding that I cannot testify unless ordered to do so by the court.”

- Once ordered by the court, the information the court orders be released can be released without any redaction.
- Remove all attorney/client privileged information (communication between AAG and DHS) from the file prior to going to court or providing file copies to the court.

As Required by Law

- CASA has complete access to the “child’s file” (ie: child’s information in the case file). Appendix 8.a
- CASA does not have complete access to the parent’s information. That is only available through (1) a properly signed Authorization (2099), (2) court order, or (3) as discovery. Appendices 2.e and 8.a
- Always redact reporting party name/address/phone and identifying information prior to providing documents or providing the file for viewing.
- Never include attorney/client privileged information (communication between AAG and DHS).

In Order to Facilitate the Provision of Services

- A 2099 (Authorization for Use and Disclosure of Information) should be properly completed by the client authorizing DHS to release confidential/protected information to the service provider for the purpose of treatment. Appendices 5.a and 5.b
- Redact confidential/protected information regarding 3rd parties (including other clients, spouses, ex-spouses, significant others, partners, battering partners, housemates, half-siblings, non-legal/step-children):
 - Names
 - Date of birth
 - Social Security Number
 - Address
 - Phone number
 - Medical
 - Mental health
 - Substance abuse (A&D)
 - Criminal history
 - HIV/AIDS
 - Genetic Testing
 - Vocational Rehabilitation
- Redact reporting party name/address/phone and identifying information
- Never include any attorney/client privileged information (communication between AAG and DHS)

Other Circumstances where DHS is Authorized

- This is a “catch all” category to cover other miscellaneous disclosures where DHS is required or authorized to release information or documents
- Redact reporting party name/address/phone and identifying information
- Redact Domestic Violence information (ie: victim’s location, phone number, etc.)
- Redact Foster Parent name/address/phone and identifying information
- Redact any confidential or protected information that is not authorized by a properly completed 2099.
- Never include any attorney/client privileged information (communication between AAG and DHS)